

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B. P. J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**CIVIL ACTION NO. 2:21-cv-00316
Judge Joseph R. Goodwin**

**WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY
BOARD OF EDUCATION, WEST
VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
W. CLAYTON BURCH, in his official
Capacity as State Superintendent, DORA
STUTLER, in her official capacity as
Harrison County Superintendent, and
THE STATE OF WEST VIRGINIA,**

Defendants.

and LAINEY ARMISTEAD,

Intervenor Defendant.

**DEFENDANT STATE OF WEST VIRGINIA’S MOTION IN LIMINE TO EXCLUDE
THE PARTIAL TRANSCRIPT OF H.B. 3293’S LEGISLATIVE HEARINGS
(HEARSAY, RELEVANCE, INCOMPLETE TRANSCRIPT
AND LAWYER AS WITNESS)**

Defendant, State of West Virginia (the “State”), respectfully moves for an order *in limine* to exclude the usage of the proffered partial transcript of H.B. 3293’s legislative hearings because it is hearsay, irrelevant, incomplete, and un-remediable because the transcriber—attorney Stark—cannot be both a witness and counsel of record. Based on Plaintiff’s Memorandum in Support of Motion for Summary Judgment, the State expects Plaintiff to attempt to introduce a partial transcript of the legislative hearings as evidence that the Legislature enacted H.B. 3293 based on

animus, rather than the legitimate reasons indicated in the statute itself and advanced by the State. This partial transcript, which was seemingly transcribed by attorney Stark (or possibly someone else), includes out-of-court statements which are hearsay without any valid exceptions. *See* Fed. R. Evid. 801. Further, the transcript contains only fragments of the legislative hearings in violation of Fed. R. Evid. 106.

Also, the statements therein are not relevant to show the intent of the Legislature as a whole. *See* Fed. R. Evid. 402. Finally, attorney Stark is impermissibly acting as both a witness and counsel of record in relation to this transcript. The grounds for this Motion are more fully set forth in the Memorandum in Support below.

Therefore, the State respectfully requests that its Motion *in Limine* be granted.

Respectfully submitted,

PATRICK MORRISEY
West Virginia Attorney General

/s/ Curtis R. A. Capehart
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Chief Deputy Attorney General
Curtis R.A. Capehart (WV Bar # 9876)
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Counsel for Defendant, STATE OF WEST VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of June 2022, I electronically filed the foregoing Motion with the Clerk of Court and all parties using the CM/ECF System.

/s/ Curtis R. A. Capehart
Curtis R. A. Capehart